

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

vs.

CRIMINAL CASE NO.: 21-265

ALBERT CUMMINGS

SENTENCING MEMORANDUM

I. INTRODUCTION

Mr. Cummings is a 43-year-old man who stands before this court having taken responsibility for his conduct. On November 6, 2023, Mr. Cummings pled guilty to a lesser included offense at Count One of the indictment charging him with Conspiracy to Distribute and Possess with Intent to Distribute quantities of Fentanyl and Heroin, contrary to the provisions of 21 U.S.C. §§ 841(a)(1) and 841 (b)(1)(C), in violation of 21 U.S.C. § 846.

II. APPLICABLE LEGAL STANDARDS

a. Generally

This Court has “broad discretion” in imposing a sentence. *United States v. Booker*, 543 U.S. 220, 233 (2005). While the Court must consider the United States Sentencing Guidelines (“Guidelines”) when fashioning a sentence, it may not presume that a sentence within the advisory Guideline range is appropriate. *Gall v. United States*, 552 U.S. 38, 50 (2007). When imposing a sentence, the Court must ensure that it is “sufficient, but not greater than necessary” to achieve the goals of sentencing, with particular attention paid to Mr. Cummings’s “history and characteristics.” 18 U.S.C. § 3553(a), (a)(1). “In view of the excessive incarceration rates in the recent past and their unnecessary, deleterious effect on individuals sentenced, their family, society and our economy, parsimony in incarceration is to be prized.” *United States v. Smith*, 2016 WL 125688, at *2 (E.D.N.Y. Jan 11, 2016).

b. Departures

A sentencing court may depart from the applicable Guideline range if there is a mitigating circumstance “of a kind, or to a degree, not adequately taken into consideration [in the] guidelines.” USSG § 5K2.0. In particular, the acceptance of responsibility, Mr. Cummings’s de minimus participation in the conspiracy, and the availability of sentences which most appropriately address the crime charged.

III. APPLICATION OF SECTION 3553(a) FACTORS

Pursuant to Title 18, United States Code, Section 3553(a), the court, in determining the sentence to be imposed, must consider (1) the nature and circumstances of the offense and the history and characteristics of Mr. Cummings, (2) the need for the sentence imposed, (3) the kinds of sentences available, (4) the kinds of sentence and the sentencing range established under the Guidelines, (5) any pertinent policy statement under the Guidelines, (6) the need to avoid unwarranted sentencing disparities, and (7) the need for restitution. 18 U.S.C. § 3553(a).

a. Mr. Cummings History and Characteristics

i. Family Life

The following facts concerning Mr. Cummings’ individual and family life were gleaned from the Presentence Report and Mr. Cummings interview with the probation office. Mr. Cummings was born in Cleveland, Ohio, on January 17, 1980, to Albert Bizzell and Doris Rice (née Sullivan). His mother, age 72, resides in Columbus, Ohio and is employed as a security officer at Walgreens. Mr. Cummings’ father, age 80, resides in Cleveland, Ohio and is a retired welder. Mr. Cummings has a good relationship with both of his parents, and they communicate weekly.

Mr. Cummings has three full siblings and three half siblings as listed in the chart below.

<u>Name of Sibling</u>	<u>Relationship</u>	<u>Age</u>	<u>Address</u>	<u>Occupation</u>	<u>Contact</u>
Sharae Cummings	Sister	44	Columbus, Ohio	Factory Worker	Weekly
Aziz Cummings	Brother	34	Columbus, Ohio	Unknown – Possibly receives Supplemental Security Income (SSI)	Weekly
Charadae Cummings	Sister	33	Columbus, Ohio	Unknown-Recent college graduate	Weekly
Rahim Cummings	Maternal Half-brother	56	Dearborn, Michigan	Unknown	Weekly
Latasha Cummings	Maternal Half-sister	54	Columbus, Ohio	Business Owner	Weekly
Marcus Rice	Half-brother	28	Toledo Correctional Institution	None – Incarcerated	None

Mr. Cummings lived near Cleveland, Ohio for most of his life. When he was a pre-teenager, his mother moved the family to College Park, Georgia, near Atlanta to obtain better employment than she had in Ohio. Unhappy in Georgia, Ms. Cummings moved the family back to Cleveland, Ohio after approximately three years.

Mr. Cummings had a “good upbringing” and a “great” childhood, despite his father being incarcerated for some of his childhood. His mother worked for the transit authority and University Hospital at that time. Though his mother had two jobs, he recalled that there were times that the heat and/or gas would be turned off and the family had to wait until she received her paycheck before it/they would be turned back on.

Mr. Cummings recalls witnessing prevalent drug use and drug dealing in the St. Clair neighborhood he grew up in. He described it as a “drug infested community.” He recalled violence associated with the prevalent drug dealing as well, stating that he was home in bed once and heard gunshots.

Mr. Cummings also remembers drug use in the home a few times. His father was a heroin addict for approximately twenty years before getting clean in 1996 and his mother was addicted to crack cocaine for approximately six years in the late 1990s to early 2000s. Prior to his getting clean, Mr. Cummings recalled seeing a needle in his father’s arm on a few occasions.

Mr. Cummings has never been married, though he was previously engaged to Michelle Maxwell, age 43, in 1999. Ms. Maxwell resides in Cleveland, Ohio and owns a party van transportation business. According to Mr. Cummings, he and Ms. Maxwell started dating in high school and they have two children together. They maintain occasional contact.

Mr. Cummings has five children as listed in the chart below:

<u>Name</u>	<u>Relationship/Age</u>	<u>Location</u>	<u>Other Parent/Age</u>
Jazzyln Maxwell	Daughter/23	Cleveland, Ohio	Michelle Maxwell/43
Jajuan Maxwell	Son/22	Cleveland, Ohio	Michelle Maxwell/43
Camron Williams	Son/16	Euclid, Ohio	Diamond Williams/40
Abbas Cummings	Son/6	Sharon, Pennsylvania	Khadjhah (Last name unknown)/38
Samir Lawrence	Son/5	Atlanta, Georgia	Shanita Lawrence/37

Mr. Cummings ‘daughter Jazzyln is employed as a home health aide, and she recently received a job offer for nursing in Columbus, Ohio. They have a good relationship and maintain weekly contact. Jajuan is employed as a carpet cleaner. They have a great relationship and maintain weekly contact. Prior to Jazzyln and Jajuan turning eighteen, Mr. Cummings recalled having a child support agreement in place. He stated that he did not recall paying monthly, but

the payments were garnished from his taxes each year. Camron attends high school and plays football and basketball. Mr. Cummings remembers that there is a child support agreement in place for Camron, but does not recall the details. They have a great relationship and maintain monthly contact. Mr. Cummings stated that there is no child support agreement for Abbas or Samir. They have great relationships, and Mr. Cummings maintains contact with Abbas every few months and weekly with Samir.

ii. Acceptance of Responsibility

Mr. Cummings, by pleading guilty, has accepted responsibility for his role in the instant case. He has pleaded guilty to a lesser included offense at Count 1 of the indictment saving the government the time and money associated with preparing for trial.

b. Sentencing Guidelines

The probation office calculated Mr. Cummings' advisory guidelines range as follows:

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| • Base offense level USSG §2d1.1: | 28 |
| • Acceptance of responsibility USSG §3E1.1(a) | -2 |
| • Timely notification of pleas USSG §3E1.1(b)-1 total: | -1 |
| • Specific Offense Characteristic USSG §3C1.2 | +2 |
| • Other adjustments | |

Total OGS	27
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Section 3553 Sentencing Factors

Mr. Cummings realizes that the conduct charged and for which he has accepted responsibility for is quite serious. That said, the guidelines are very high in this case and

overstate a just sentence for Mr. Cummings. If Mr. Cummings is sentenced to 100 months incarceration, he will be 51 years old when he is released which will make it difficult for him to reintegrate and find life-sustaining employment.

The Need for the Sentence Imposed

Mr. Cummings's guideline range sentence is a term of imprisonment of 100 to 125 months, a term of supervised release of at least (4) years, and a special assessment of \$100.00. Counsel has found Mr. Cummings to be an engaging, polite gentleman. He is willing to work hard at serving his time in as constructive a manner as possible. Mr. Cummings has the support of his mother Doris, and others in his community.

The kinds of sentences in this sentencing range

Mr. Cummings respectfully submits that this court sentence him below the low end of the advisory guideline range of 100 months.

Avoiding unwarranted sentencing disparity

A sentence below the low end of the advisory guidelines will sufficiently satisfy the § 3553 factors.

Special Requests

Mr. Cummings requests that this Honorable Court recommend that he serve his sentence at a facility as close as possible to Cleveland, Ohio. Mr. Cummings desires to participate in the RDAP program, as well as in any vocational training programs that may interest him.

Respectfully submitted,

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